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MAR 16 2006

In re Application of :
Fillebrown et al. :
Application No. 09/773,885 :
Filed: February 1, 2001 : ON PETITION
Title of Invention: :
PERSONAL WIRELESS NETWORK :
:

OFFICE OF PETITIONS

This is a decision in response to the Request for Reconsideration, filed February 13, 2006, requesting the Declaration of Prior Invention Under 37 C.F.R. § 1.131 be made by the signing inventors on behalf of themselves and the nonsigning inventor. The petition is properly treated as a petition under 37 CFR 1.183 seeking waiver of 37 CFR 1.131 to the extent that it requires all of the named inventors execute the declaration filed thereunder¹.

This Petition is hereby **granted**.

Petitioner's assert that the claimed invention, the subject matter of which is described and claimed in the above identified application, was conceived prior to the effective date of the reference, and was diligently reduced to practice by all of the application's named inventors. Petitioner's further assert that, after diligent effort, inventor Lisa Fillebrown, is unavailable.

In support of this assertion, Petitioner's file the Declaration of Robert D. McCutcheon which establishes that non-signing inventor, Lisa Fillebrown, refuses to sign the declaration.

¹ Rule 47 only applies where, in the first instance, the signature of an originally named, or to be added, inventor can not be obtained. As all of the inventors executed the original declaration, filed February 1, 2001, and thus made the application, 37 CFR 1.47 no longer applies to this case. See, 37 CFR 1.47; MPEP 201.03. Rather, the remedy lies under 37 CFR 1.183 when a required affidavit or declaration of a prior invention to overcome a cited patent or publication, under 37 CFR 1.131, is not executed in whole or in part by a previously signing inventor. See, MPEP 715.04.

As noted in MPEP 715.04, an adequate showing may lead to acceptance of a declaration under 37 CFR 1.131 executed by less than all the named inventors of the claimed subject matter in question. Under the facts presented, it is agreed that justice requires waiver of the rules to the extent they require Lisa A. Fillebrown, Russell D. Kautz and Kenneth M. Glover to declare. However, the favorable decision herein does not relieve applicants from their burden to establish that the invention was completed before the date of the references and that the claimed invention was the product of joint inventors. See, In re Carlson, 79 F.2d 900, 27 USPQ 400 (CCPA 1935).

The application is being referred to Technology Center 2155.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3232.

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